

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of the Commission's Regulatory Policies
to Allow Non-U.S.-Licensed Space Stations to
Provide Domestic and International Satellite Service in
the United States

IB Docket No. 96-111

and

Amendment of Section 25.131 of the Commission's
Rules and Regulations to Eliminate the Licensing
Requirement for Certain International Receive-Only
Earth Stations

CC Docket No. 93-23
RM-7931

and

Communications Satellite Corporation Request for
Waiver of Section 25.131(j)(1) of the Commission's
Rules As It Applies to Services Provided via the
Intelsat K Satellite

File No. ISP 92-007

FURTHER COMMENTS OF TELEDESIC CORPORATION

Teledesic Corporation¹ submits these Further Comments in response to the Commission's
Further Notice of Proposed Rulemaking released July 18, 1997 (the "*Further Notice*"), in which

¹ Teledesic is licensed to construct, launch, and operate a constellation of non-geostationary orbit ("NGSO") satellites providing Fixed Satellite Service ("FSS") with service links in the 18.8-19.3 GHz and 28.6-29.1 GHz bands. The Teledesic Network will provide switched, broadband network connections through service partners in host countries worldwide, from the largest urban centers to the most remote villages.

the Commission seeks comment on implementation of the World Trade Organization Agreement on Basic Telecommunications Services (the “WTO Basic Telecom Agreement”). In general, Teledesic agrees with the approach to implementation set forth in the *Further Notice*: Eliminate the Commission’s proposed “ECO-Sat” test in situations where the WTO Basic Telecom Agreement can be expected to result in full and fair competition, but retain the ECO-Sat test where the WTO Basic Telecom Agreement does not apply.

In view of its substantial agreement with the analysis of the *Further Notice*, Teledesic will limit these Further Comments to three discrete matters. *First*, Teledesic opposes application of the “route markets” portion of ECO-Sat, to U.S. and WTO-member licensees alike, to the extent they propose to serve non-WTO countries. *Second*, Teledesic emphasizes the importance of the Commission’s excellent proposal for foreign participation in U.S. licensing rounds. *Third*, in light of the WTO Basic Telecom Agreement and the Commission’s proposed implementation of that Agreement, Teledesic withdraws its earlier request for separate “Interactive Broadband Satellite Services” (“IBSS”) service category, to which a “critical mass” standard would apply. These points are discussed in more detail below.

I. The Commission Should Not Impose Route Restrictions on U.S. Licensees Serving Non-WTO-Member Markets

Somewhat surprisingly, the *Further Notice* proposes to reverse the most important result of the *DISCO I* proceeding, namely the Commission’s decision to permit all U.S. licensees to provide domestic or international service, or both, without obtaining separate regulatory approvals.² The *Further Notice* bases this proposal on the following reasoning: The WTO Basic

² *Amendment to the Commission’s Regulatory Policies Governing Domestic Fixed-Satellite and Separate International Satellite Systems*, 11 F.C.C. Rcd. 2429 (1996).

Telecom Agreement will not help prevent competitive distortions on routes to or from non-WTO countries, so it would be desirable to apply an ECO-Sat test for these routes; but the national treatment obligations of the General Agreement on Trade in Services forbid the FCC from imposing this test *only* on foreign-licensed systems, so the FCC must apply the same limitations on U.S. licensees.³

Teledesic opposes application of ECO-Sat to satellites licensed by the U.S. or another WTO member, even for service on non-WTO routes. As a licensee, Teledesic's primary interest is in maximizing both the scope of its license and the flexibility with which it may serve its customers. The *DISCO I* rules advance this primary interest by permitting Teledesic to serve any country where it can gain market access, without further approval from the FCC. Where that scope and flexibility are limited by exclusionary foreign measures, the WTO Basic Telecom Agreement may or may not provide a remedy; but in either event the WTO Basic Telecom Agreement is comprehensive enough that interstitial restrictions imposed by the Commission on foreign licensees are unlikely to go very far toward bringing about a more competitive marketplace.

Moreover, the additional regulatory showings that would be necessary if ECO-Sat applied to U.S. satellites serving non-WTO routes would be circular. An application of ECO-Sat to a U.S. operator would mean that the ability of the U.S. operator to serve a non-WTO market would depend on the extent to which the non-WTO market provides effective competitive opportunities for U.S. operators. Because of its circularity, this is essentially a pointless inquiry, and the Commission should not waste its resources on it. Although it is theoretically possible for a

³ *Further Notice* ¶¶ 25-26.

foreign operator to gain a competitive advantage over U.S. operators by entering non-WTO routes that are closed to U.S. operators, the number and scope of the market access commitments secured in the WTO Basic Telecom Agreement will make such cases insufficient to justify the re-regulation of international satellite services.

II. The Commission Should Adopt Its Proposal for Foreign Participation in U.S. Space Station Processing Rounds, as Refined in the *Further Notice*

The prospect of foreign participation in FCC processing rounds has been a difficult issue since before the start of this proceeding. The problem is that spectrum is assigned by the FCC during space station processing rounds, but non-U.S.-licensed satellite operators do not generally file space station applications with the FCC. The first *Notice* in this proceeding addressed this issue by proposing to give comparative consideration to earth station applications from the foreign operators.⁴

In the months since the first *Notice*, the Commission has significantly improved upon the original proposal by adding a “letter of intent” procedure. Now, in addition to the earth station procedure, a foreign satellite operator may file a “letter of intent” and by so doing receive consideration in a space station processing round.

Teledesic urges the Commission to adopt the further refinements to this process described in the *Further Notice*. For some satellite services, the prospect of market entry is illusory if it does not include a fair chance to be considered at the time frequencies are assigned to particular applicants. It is critically important for the U.S. to have procedures in place to deal with these

⁴ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 11 F.C.C. 18178, 18186-87 (1996).

situations, and those procedures must be good enough to ensure fairness to U.S. operators if the U.S. procedures are emulated in other countries. The Commission's proposals meet this test.

III. There Is No Longer Any Need to Apply a “Critical Mass” Test to Interactive Broadband Satellite Services

In its original Comments and Reply Comments, Teledesic proposed a fourth service category for “Interactive Broadband Satellite Services” (“IBSS”) and urged the Commission to adopt a “critical mass” test for this category. This position rested on the premise that IBSS transmissions would not typically be cross-border, and would therefore not be amenable to any route-based analysis. The original round of comments betrayed much confusion about the “critical mass” version of ECO-Sat. The *Further Notice* acknowledges the lack of consensus on this point with respect to MSS and “seek[s] additional comment on this and other possible approaches for evaluating requests for use of non-WTO satellite systems to deliver fixed-satellite and mobile satellite services. Commenters should specifically address the advantages and disadvantages of a route-by-route approach.”⁵

In light of the WTO Basic Telecom Agreement and the Commission's proposals for implementing it, Teledesic concludes that there is no longer any need to apply a “critical mass” test to IBSS. Given the relatively small number of satellite operators to whom such a test would apply, it is difficult to imagine that the application of ECO-Sat to these services would provide a more effective guarantee of vigorous competition than would the entry of the many foreign and U.S. operators who have proposed IBSS systems. Furthermore, although the Commission has left open the possibility of applying a “route market only” version of ECO-Sat to WTO-member

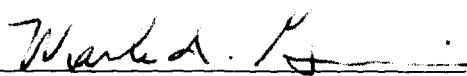
⁵ *Further Notice* ¶ 24.

satellites serving non-WTO markets, the nature of IBSS is such that a "route" test would fail to account for IBSS traffic, which will typically not be cross-border.

The inefficacy of either a "critical mass" or a "home plus route" version of ECO-Sat for IBSS suggests that there is no longer any need for the IBSS subcategory. If, as Teledesic believes, there is no regulatory test that could be applied to an IBSS subcategory in order to bring about greater competition, then it is equally pointless to maintain any IBSS subcategory at all. In short, there are likely to be so many competing IBSS providers, from so many countries, that the Commission probably need not worry about competitive distortions in the U.S. market.

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CERTIFICATE OF SERVICE

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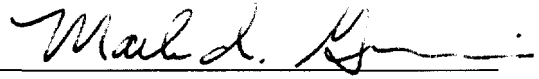
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